

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.178 OF 2024

WILBUR DSOUZA

... Petitioner

Versus

STATE OF GOA THR. THE
CHIEF SECRETARY AND 7 ORS.

... Respondents

Mr Rohit Bras De Sa with Mr Joel Pinto, Advocates *for the Petitioner*.

Ms Maria Correia, Additional Government Advocate *for Respondent
Nos.1, 2, 6, 7 and 8.*

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 28th February 2024

P.C.:

1. Heard Mr Rohit Bras De Sa who appears with Mr Joel Pinto for the Petitioner. Ms Maria Correia learned Additional Government Advocate, appears for Respondent Nos. 1, 2, 6, 7 and 8.
2. The Petitioner challenges the zoning in the Outline Development Plan Calangute, Candolim 2025 prepared by the 3rd Respondent under the provisions of Goa Town and Country Planning Act, 1974 on various grounds including violation of Article 14 of the Constitution.
3. Ms Maria Correia points out that under Section 38 of the said Act,

an appeal is provided to any person aggrieved by any provision contained in the Outline Development Plan Calangute, Candolim 2025. She points out that such an appeal can be instituted before the District Court questioning the validity of the Development Plan or any of its provisions.

4. Section 38 of the said Act reads as under:-

“38. Appeal.— (1) Within one month of the coming into operation of any Development Plan, any person aggrieved by any provisions contained therein may make an application to the District Court questioning the validity of the Development Plan, or any of its provisions on the following grounds, namely:—

(i) that it is not within the powers conferred by this Act, or

(ii) that any requirement of this Act or of any rules made thereunder had not been complied with in relation to the making of such Development Plan.

(2) The District Court, after giving an opportunity of being heard to the applicant, Planning and Development Authority concerned, Board and Government may—

(i) stay, until the final determination of the proceedings, the operation of the Development Plan or the provisions contained therein, in so far as it affects any property of the applicant; and

(ii) quash, if it is satisfied that the Development Plan or any provisions contained therein are not within the powers conferred by this Act, or the rules made thereunder, or that the interests of the applicant have been substantially prejudiced by failure to comply with any requirement of this Act or of the rules, the Development Plan or any provisions contained therein generally or in so far as they affect the property of the applicant.

(3) Subject to the provisions of sub-sections (1) and (2), a Development Plan shall not, either before or after it has been

approved, be questioned in any manner, in any legal proceedings whatsoever.”

5. The Petitioner contends that the zoning, which is nothing but a provision under the Outline Development Plan Calangute, Candolim 2025, violates the principle of parity and consequently, the mandate of Article 14 of the Constitution of India. Based on this, the Petitioner contends that it was not within the powers of the NGPDA to make any provision or zoning which violates Article 14 of the Constitution.

6. Accordingly, we are satisfied that the Petitioner has an alternate and efficacious remedy under the said Act. Such a remedy is provided before the District Court, which according to us, would have the necessary powers to entertain such an appeal.

7. Since the Petitioner has an alternate and efficacious remedy available under the Act, we do not propose to entertain the present petition. However, we leave it open to the Petitioner to avail of such an alternate remedy under the Act.

8. With the above liberty, we dispose of this petition. All concerned to act based on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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Francisco Dsouza
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